No. 80-1201

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In the Supreme Court of the United States

OCTOBER TERM, 1980

RALPH OLIVER HOLLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's conviction for conspiracy to defraud the United States under 18 U.S.C. 371 was supported by substantial evidence.

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OPINIONS BELOW

The district court did not issue a written opinion. The opinion of the court of appeals (Pet. App. 9-30) is reported at 622 F. 2d 857.

JURISDICTION

The judgment of the court of appeals was entered on July 31, 1980, and a petition for rehearing was denied on September 15, 1980. The petition for a writ of certiorari was filed on November 14, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Texas, petitioner was convicted of conspiring to defraud the United States by impeding the

Internal Revenue Service in the ascertainment and collection of taxes, in violation of 18 U.S.C. 371.[1] The district court sentenced petitioner to a five-year prison term and fined him $10,000. The court of appeals affirmed (Pet. App. 9-30).

The evidence adduced at trial showed that the object of the conspiracy was to conceal income illegally generated in the United States, allowing the participants to evade federal income taxation. To achieve this purpose, illegally earned funds were taken surreptitiously out of the United States to the Cayman Islands and then returned to the United States in the form of fictitious loans from a Caymanian corporation to American corporations specifically created to receive the loans (Pet. App. 9-10).

The government established, largely through the testimony of two undercover agents of the Drug Enforcement Administration who had infiltrated the conspiracy, that Harold Oldham and his lawyer, Raymond Enstam, had established a company named Esmeraldas y Mariposas in the Cayman Islands, which they used for laundering money received in various illegal enterprises, including narcotics trafficking. Oldham advised the undercover agents that this laundering plan was "'IRS-tested, foolproof'" (Pet. App. 12). Oldham sold the agents $20,000 worth of cocaine, and Enstam set up a corporation for them named Grand Vin, Incorporated, for the purpose of laundering cocaine profits. Enstam went to the Cayman Islands with the two undercover agents who gave him $50,000 in cash to launder (Pet.

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[1]The Court recently denied review of the conviction of Raymond Enstam, who was also charged and convicted in the conspiracy. See *Enstam* v. *United States*, cert. denied, No. 80-764 (Feb. 23, 1981). Two other individuals, Derek Price and Harold Oldham, were charged in the same indictment but were unavailable for trial (Pet. App. 10).

App. 10-11). After the agents paid Enstam $3,500 for his services, another co-conspirator, Derek Price, a Caymanian banker, gave the agents a cashier's check for $46,270 to bring to the United States (Tr. 286-289, 462-464).

The evidence showed that petitioner engaged in money laundering by funneling illegally obtained cash through Oldham's and Enstam's Caymanian corporation, Esmeraldas y Mariposas. These funds were returned to the petitioner in the form of fictitious loans from Esmeraldas y Mariposas to a domestic corporation, Brittle Oaks, that petitioner controlled. The government introduced documentary evidence, bearing petitioner's signature and linking him to Oldham, Price, Brittle Oaks and Esmeraldas y Mariposas (Pet. App. 17). This evidence included letters from petitioner to Derek Price and fictitious loan documents, showing purported loans from Esmeraldas y Mariposas to the petitioner's Brittle Oaks corporation (Tr. 294-295, 465, 613-624).

The government's undercover agents both testified that Oldham told them that he had set up Brittle Oaks as a money-laundering scheme for some friends in Florida (Pet. App. 16-17). Oldham showed the agents stationery bearing the letterhead "Brittle Oaks" as an example of what he could do in "forming * * * [a] corporation" for them (Tr. 245). Oldham told the agents that the owners of Brittle Oaks " * * * had purchased some land in Florida a while back with money they couldn't account for, illegal money, and that this Brittle Oaks company was created so as [sic] if IRS audited them [in the future, it could be explained] that the true owners of this land or how they obtained the money was from this firm Brittle Oaks" [sic] (Pet. App. 16). Oldham also told the agents that " * * * * we started a phony company by the name of Brittle Oaks because [a friend in Tampa, Florida] wants to buy some property and he has got all this illegal money, illicit money, and he doesn't know

how to wash it. What I am going to do is give him a loan through Esmeraldas y Mariposas, that way he can show IRS how he paid for the property' " (Pet. App. 16-17). Oldham's statements to the agents were corroborated by evidence that petitioner purchased 40 acres of land in Brookville, Florida, on August 24, 1976, for $55,000. Petitioner, who was the president of Brittle Oaks, closed the transaction in the name of Brittle Oaks (Pet. App. 17).

ARGUMENT

The court of appeals correctly held that petitioner's conviction under 18 U.S.C. 371 was supported by substantial evidence (see Pet. App. 16).

1. The government proved, through documentary evidence, the nature of petitioner's relationship to Brittle Oaks, Esmeraldas y Mariposas, Oldham, and the other conspirators in Oldham's money-laundering scheme. In addition, the government proved, through Oldham's statements to the agents, petitioner's intention to conceal from the Internal Revenue Service, in the event of an audit, income and the source of funds used to purchase his land.[2] Although the court of appeals observed that the government's evidence concerning petitioner was largely circumstantial (Pet. App. 16), it correctly found that evidence to be

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[2]In his dissenting opinion, Judge Tuttle concluded that Oldham's statements to the undercover agents implicating petitioner were hearsay and should not have been admitted into evidence, citing *United States* v. *James*, 590 F. 2d 575 (5th Cir. 1979) (en banc). In Judge Tuttle's view (Pet. App. 29-30), the government's independent evidence of the conspiracy was insufficient to permit the introduction of Oldham's out-of-court declarations under Rule 801(d)(2)(E), Fed. R. Evid., as "a statement of a coconspirator of a party during the course and in furtherance of the conspiracy." Although we believe that the documentary evidence linking petitioner to the conspiracy was sufficient to permit the admission of Oldham's out-of-court declarations against petitioner, petitioner has not sought review of this question. Thus, the question is not before the Court.

substantial. This Court has held that in a conspiracy case, "[t]he verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States*, 315 U.S. 60, 80 (1942).

Contrary to petitioner's suggestion (Pet. 3), "[p]articipation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collection of circumstances.' " 315 U.S. at 80, quoting *United States* v. *Manton*, 107 F. 2d 834, 839 (2d Cir. 1938). The scope of the agreement may be proved by " 'evidence of out-of-court declarations or acts of a coconspirator.' " *United States* v. *Marable*, 574 F. 2d 224, 230 (5th Cir. 1978). When properly viewed under this standard, there was substantial evidence of both the existence of the conspiracy and petitioner's knowing participation in it. Accord: *United States* v. *Malatesta*, 590 F. 2d 1379, 1382 (5th Cir.), cert. denied, 440 U.S. 962 (1979).

Ingram v. *United States*, 360 U.S. 672, 677 (1959), upon which petitioner relies (Pet. 5), is not to the contrary. There, the Court reversed the convictions of two alleged coconspirators on the ground that the government had failed to prove that they had knowledge of the object of the conspiracy. Here, on the other hand, the government proved through documentary evidence that petitioner had purchased land on behalf of Brittle Oaks and had engaged in various loan transactions between Brittle Oaks and Esmeraldas y Mariposas. It proved through the agent's testimony concerning Oldham's out-of-court statements that these transactions were a sham, intended by the petitioner to conceal income and assets from the Internal Revenue Service. Hence, unlike *Ingram*, the government proved not only petitioner's participation in the conspiracy but his guilty knowledge.

2. Finally, petitioner incorrectly asserts (Pet. 6) that this is an appropriate case for this Court to consider a conflict among the circuit courts concerning the quantum of evidence necessary to sustain a conspiracy conviction on appeal. Although some courts have applied a "slight evidence" standard in similar cases (see *e.g.*, *United States* v. *Lustig*, 555 F. 2d 737, 750 (9th Cir. 1977), cert. denied, 434 U.S. 1045 (1978); *United States* v. *Schmaltz*, 562 F. 2d 558, 560 (8th Cir.), cert. denied, 434 U.S. 957 (1977); *United States* v. *De Lazo*, 497 F. 2d 1168, 1170 (3d Cir. 1974)), the court of appeals followed its previous decision in *United States* v. *Malatesta*, *supra*, 590 F. 2d at 1382 (*en banc*), and considered the sufficiency of the evidence of conspiracy in this case under the more stringent "substantial evidence" test. The court of appeals has applied the standard more favorable to the petitioner and has, nevertheless, found the evidence of conspiracy sufficient to sustain his conviction. Hence, resolution of any conflict between the "slight evidence" rule and the "substantial evidence" test applied here, would not affect the outcome of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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